



WASHOE COUNTY

"Dedicated To Excellence in Public Service"

www.co.washoe.nv.us

CM/ACM KS
Finance DN
DA KS
Risk Mgt. DE
HR N/A
Grants CE

STAFF REPORT

BOARD MEETING DATE: February 24, 2015

DATE: January 30, 2015
TO: Board of County Commissioners
FROM: Clara Lawson, P.E., PTOE, Licensed Engineer, Engineering and Capital Projects, Community Services, 328-3603, clawson@washoecounty.us
THROUGH: Dwayne Smith, P.E., Division Director, Engineering and Capital Projects Community Services Department, 328-2043, desmith@washoecounty.us
SUBJECT: Approve a Cooperative Agreement between Washoe County and the Nevada Department of Transportation through December 31, 2016 for Phase II of the Safe Routes to School Improvement Project. (Commission Districts 2 and 5.)

SUMMARY

The Cooperative Agreement between Washoe County and the State of Nevada, acting through its Nevada Department of Transportation (NDOT), defines the responsibilities of the two agencies for Phase II of the Safe Routes to School (SRTS) Project.

One of NDOT's responsibilities under the Cooperative Agreement is to obligate federal funding for the Project in a maximum amount of \$720,641.00 and to be responsible for all costs exceeding the obligated federal funds. The Project will fund infrastructure components including sidewalk, curb, gutter, handicap ramps and flashing beacons at various Washoe County school locations.

Phase I of the Project included non-infrastructure activities including establishment of a SRTS Committee and development of a list of infrastructure projects.

Washoe County Strategic Objective supported by this item: Safe, Secure, and Healthy Communities.

PREVIOUS ACTION

On December 13, 2011 the Board of County Commissioners (Board) accepted an extension to the Sub-Grantee Agreement for Non-infrastructure Activities between the County and the Washoe County School District (WCSD) to extend the SRTS Program for an additional year utilizing existing grant funds (No County match) from the Federal Highway Administration Office of Safety through the State of Nevada Department of Transportation (NDOT).

AGENDA ITEM # 6K2

BACKGROUND

The Project has been approved for Federal SRTS funds with the NDOT. Initially the SRTS funding was the result of a joint effort by the District Health Department, Safe Kids Coalition, and Washoe County. Phase I of the grant has been used by the WCSD to hire a coordinator to develop and implement education and encouragement programs, in addition to identifying safety concerns and possible engineering solutions. A SRTS committee was also formed in Phase I to review the progress of the SRTS coordinator and provide input to the SRTS program including identifying engineering solutions. Phase I of the grant program expired September 30, 2012.

At this time a Cooperative Agreement with NDOT is requested and will allow NDOT staff to design and install the engineering solutions that were identified and approved by the SRTS committee in Phase I and are listed in Attachment A of the Cooperative Agreement.

NDOT will design, advertise, award, and administer the construction of the project. Washoe County will review the plans and specifications, and grant NDOT permission to work within the County's right of way. The County will be responsible for maintenance of the improvements which are located within Washoe County right-of-way.

FISCAL IMPACT

There is no identifiable fiscal impact to the County as curb and gutter often reduce the County's maintenance costs and any maintenance of the rectangular rapid flashing beacon will be absorbed into the County's traffic signal maintenance budget, which is located in the Engineering cost center 105500 account 710205.

RECOMMENDATION

It is recommended that the Board of County Commissioners approve a Cooperative Agreement between Washoe County and the Nevada Department of Transportation through December 31, 2016 for Phase II of the Safe Routes to School Improvement Project.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be: "Move to approve a Cooperative Agreement between Washoe County and the Nevada Department of Transportation through December 31, 2016 for Phase II of the Safe Routes to School Improvement Project."

COOPERATIVE AGREEMENT

This Agreement is made and entered into this ____ day of _____, _____, by and between the STATE OF NEVADA, acting by and through its Department of Transportation, hereinafter called the DEPARTMENT, and Washoe County, acting by and through its Department of Community Services, 1001 E. Ninth Street, Reno, NV 89512, hereinafter called the COUNTY.

WITNESSETH:

WHEREAS, a Cooperative Agreement is defined as an agreement between two or more public agencies for the "joint exercise of powers, privileges and authority;" and

WHEREAS, pursuant to the provisions contained in Chapter 408 of the Nevada Revised Statutes, the Director of the DEPARTMENT may enter into agreements necessary to carry out the provisions of the Chapter; and

WHEREAS, NRS 277.110 authorizes any two or more public agencies to enter into agreements for joint or cooperative action; and

WHEREAS, the parties to this Agreement are public agencies and authorized to enter into agreement in accordance with NRS 277.080 to 277.110; and

WHEREAS, the purpose of this Agreement is to address each party's responsibilities concerning the design, advertise, award, construction management, maintenance, and funding for pedestrian improvements, including sidewalk, curb and gutter, handicap ramps at various Washoe County school locations as outlined in the project scope attached hereto and incorporated herein as Attachment A hereinafter called the PROJECT; and

WHEREAS, the design, advertise, award, construction management services to be provided by the DEPARTMENT, will be of benefit to the COUNTY and to the people of the State of Nevada; and

WHEREAS, the PROJECT has been approved for Federal Safe Routes to School (SRTS) funds; and

WHEREAS, the COUNTY is a sub-recipient of federal transportation funds C.F.D.A. (Code of Federal Domestic Assistance) Number 20.205 will be used for reporting purposes; and

WHEREAS, the parties hereto are willing and able to perform the services described herein;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is agreed as follows:

ARTICLE I - COUNTY AGREES

1. To require those utility companies having franchise agreements with the COUNTY, when permitted under the terms of the franchise agreement, to relocate their facilities if necessary or otherwise accommodate the PROJECT at no cost to the PROJECT, the DEPARTMENT or the COUNTY.

2. To provide documentation evidencing the COUNTY's ownership of the property the improvements will be constructed on.

3. To grant the DEPARTMENT permission to work within the COUNTY's right-of-way for the purpose of constructing the PROJECT.

4. To grant the DEPARTMENT permission to design and administer the PROJECT using NDOT Standard Plans and Standard Specifications for Road and Bridge Construction.

5. To retain maintenance responsibilities including utility costs for the pedestrian improvements that are within the COUNTY right-of-way as part of the PROJECT, upon completion and the DEPARTMENT's final written acceptance of the PROJECT.

6. To complete the review of all change orders submitted by the DEPARTMENT within five (5) working days after service of such change orders. In the event the COUNTY does not provide the DEPARTMENT with the COUNTY's written response to the DEPARTMENT's change orders within five (5) working days following the DEPARTMENT's service of such change orders, the DEPARTMENT will proceed with change orders so as to not delay the PROJECT. No response from the COUNTY within this time frame will constitute the COUNTY's consent and acceptance for the DEPARTMENT to proceed.

7. The COUNTY shall coordinate with the Washoe County School District to complete the FHWA "Parent – Walking and Biking to School Survey" (Survey) and "Student Arrival and Departure Tally Sheet" (Tally Sheet) for the pedestrian improvements located at the following schools: Virginia Palmer Elementary, Lemmon Valley Elementary, Elizabeth Lenz Elementary, Nancy Gomes Elementary, and Brown Elementary. Data is to be collected by using both the Survey and Tally Sheet prior to PROJECT initiation and at the end of each semester for the duration of the project. The COUNTY shall email a copy of the data collected for the Survey and Tally Sheet to Tim Rowe, DEPARTMENT Safe Routes to School Coordinator, at trowe@dot.state.nv.us so they may be forwarded to the FHWA for processing. The Survey and Tally Sheet are available at www.walknevada.com.

ARTICLE II - DEPARTMENT AGREES

1. To establish a Project identification Number to track all PROJECT costs.

2. To obligate federal funding under SRTS for a maximum amount of Seven Hundred Twenty Thousand Six Hundred Forty-One and No/100 dollars (\$720,641.00).

3. To be responsible for one hundred percent (100%) of all costs exceeding the obligated federal funds for the PROJECT. The DEPARTMENT agrees the COUNTY is not responsible for any costs exceeding the obligated federal funds.

4. To design, advertise, award and administer the construction of the PROJECT.

5. To design and administer the contract using NDOT Standard Plans and Standard Specifications for Road and Bridge Construction that match or most closely match the COUNTY's Standard Details for Public Works Construction.

6. To provide the COUNTY three (3) copies of the preliminary plans and specifications for review and comment, and to invite the COUNTY to the specification review meeting to address said comments.

7. To allow the COUNTY to observe, review, and inspect PROJECT construction work with the understanding that all items of concern are to be reported to the DEPARTMENT's Resident Engineer and not to the Contractor.

8. To allow the COUNTY to review and comment on the DEPARTMENT's PROJECT change orders which involve features or items related to the PROJECT for which the COUNTY assumes a maintenance responsibility.

9. To coordinate and provide liaisons for the relocation or adjustments of utilities in accordance with state and federal regulations including, but not limited to NAC (Nevada Administrative Code) Chapter 408 and 23 CFR Part 645.

10. To acquire right of way as needed for the construction of the PROJECT.

11. To ensure that applicable right-of-way laws and regulations are met on this PROJECT and to document those actions in accordance with the DEPARTMENT's administrative requirements.

12. To perform the completion of the NEPA documentation in conformance with 23 CFR Part 771 and the acquisition of environmental permits and clearances.

ARTICLE III - IT IS MUTUALLY AGREED

1. The term of this Agreement shall be from the date first written above through and including December 31, 2016, or until construction of all improvements contemplated herein have been completed and accepted by the DEPARTMENT, whichever occurs first, save and except the responsibility for maintenance as specified herein.

2. The TOTAL ESTIMATED PROJECT COSTS are Seven Hundred Twenty Thousand Six Hundred Forty-One and No/100 dollars (\$720,641.00). The Parties acknowledge and agree that the TOTAL ESTIMATED PROJECT COSTS set forth herein are only estimates.

3. The following is a summary of TOTAL ESTIMATED PROJECT COSTS and available funds:

TOTAL ESTIMATED PROJECT COSTS:

DEPARTMENT Construction Engineering Costs:	\$70,000.00
DEPARTMENT Right-of-Way Costs:	\$15,000.00
Construction Costs:	\$635,641.00

<u>TOTAL ESTIMATED PROJECT COSTS:</u>	<u>\$720,641.00</u>
---------------------------------------	---------------------

AVAILABLE FUNDING SOURCES:

Federal Safe Routes to School (SRTS) Funds:	\$720,641.00
---	--------------

<u>TOTAL PROJECT FUNDING:</u>	<u>\$720,641.00</u>
-------------------------------	---------------------

4. If the total PROJECT costs are less than the obligated funding amount, then the remaining funds will be returned to the Safe Routes to School program.

5. This Agreement shall not become effective until and unless approved by appropriate official action of the governing body of each party.

6. The COUNTY, on behalf of itself, its spouses, heirs, executors, administrators, successors, subrogates, servants, insurers, attorneys, independent representatives, personal representatives, agents, and assigns, does hereby waive, release, and forever discharge the State of Nevada, the DEPARTMENT, and each and every of their departments, divisions, agencies, officers, directors, agents, contractors, and employees, from any and all claims, demands, liens, liability, actions, causes of action, and suits for damages, at law and in equity, in any way connected with or arising from the DEPARTMENT's provision of services and work performed following termination of this Agreement, and/or following the expiration date of this Agreement, as it may be amended from time to time through written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body, prior to such expiration date.

7. Neither the State of Nevada, the DEPARTMENT, nor any of their departments, divisions, agencies, officers, directors, agents, contractors, and employees, shall have authority to extend this Agreement beyond the expiration date set forth within this Agreement, unless such extension is set forth within a written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body prior to such expiration date. The COUNTY shall not rely upon any oral or written representations expressed extrinsic to a written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body prior to such expiration date, purporting to alter or amend this Agreement, including but not limited representations relating to the extension of the Agreement's expiration date.

8. This Agreement may be terminated by either party prior to the date set forth above, provided that a termination shall not be effective until thirty (30) days after a party has served written notice upon the other party. This Agreement may be terminated by mutual consent of both parties or unilaterally by either party without cause. The parties expressly agree that this Agreement shall be terminated immediately if for any reason Federal and/or State Legislature funding ability to satisfy this Agreement is withdrawn, limited, or impaired.

9. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile or electronic mail with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth below:

FOR DEPARTMENT: Rudy Malfabon, P.E., Director
Attn.: Mike Bratzler, Senior Designer
Nevada Department of Transportation
Roadway Design Division
1263 South Stewart Street
Carson City, NV 89712
Phone: (775) 888-7653
Fax: (775) 888-7401
Email: rbratzler@dot.state.nv.us

FOR COUNTY: David Solaro, Arch., P.E.
Attn: Clara Lawson, P.E.
Washoe County Community Services
PO Box 11130
1001 E. Ninth Street

Reno, NV 89512
Phone: (775) 328-3603
Fax: (775) 328-3699
Email: clawson@washoecounty.us

10. The DEPARTMENT will award the total contract in accordance with its rules and procedures under the Standard Specifications for Road and Bridge Construction to the lowest responsive and responsible bidder. The DEPARTMENT has the right to reject any and all bid proposals determined not to be in the best interest of the State.

11. Construction engineering costs will be the actual construction engineering costs incurred by the DEPARTMENT during the construction of the PROJECT.

12. Should this Agreement be terminated by the COUNTY prior to completion of the PROJECT, the COUNTY will reimburse the DEPARTMENT for all improvement costs incurred up to the point of Agreement termination, and all costs incurred by the DEPARTMENT because of the Agreement termination.

13. Neither party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitations, earthquakes, floods, winds or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.

14. To the fullest extent of NRS Chapter 41 liability limitations, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorneys' fees and costs, caused by the negligence, errors, omissions, recklessness or intentional misconduct of its own officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described herein. This indemnification obligation is conditioned upon the performance of the duty of the party seeking indemnification (indemnified party), to serve the other party (indemnifying party) with written notice of actual or pending claim, within thirty (30) days of the indemnified party's notice of actual or pending claim or cause of action. The indemnifying party shall not be liable for reimbursement of any attorney's fees and costs incurred by the indemnified party due to said party exercising its right to participate with legal counsel.

15. The parties do not waive and intend to assert available NRS Chapter 41 liability limitations in all cases. Agreement liability of both parties shall not be subject to punitive damages. Actual damages for any DEPARTMENT breach shall never exceed the amount of funds which have been appropriated for payment under this Agreement, but not yet paid, for the fiscal year budget in existence at the time of the breach.

16. Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

17. An alteration ordered by either party which substantially changes the services provided for by the expressed intent of this Agreement will be considered extra work, and shall be specified in an Amendment which will set forth the nature and scope thereof. The method of payment for extra work shall be specified at the time the amendment is written.

18. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the exclusive jurisdiction of the Nevada state district courts for enforcement of this Agreement.

19. The illegality or invalidity of any provision or portion of this Agreement shall not affect the validity of the remainder of the Agreement and this Agreement shall be construed as if such provision did not exist. The unenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

20. Except as otherwise expressly provided within this Agreement, all or any property presently owned by either party shall remain in such ownership upon termination of this Agreement, and there shall be no transfer of property between the parties during the course of this Agreement.

21. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof a third party beneficiary status hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

22. Each party agrees to keep and maintain under generally accepted accounting principles full, true and complete records and documents pertaining to this Agreement and present, at any reasonable time, such information for inspection, examination, review, audit and copying at any office where such records and documentation is maintained. Such records and documentation shall be maintained for three (3) years after final payment is made.

23. The parties are associated with each other only for the purposes and to the extent set forth in this Agreement. Each party is and shall be a public agency separate and distinct from the other party and shall have the right to supervise, manage, operate, control and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

24. Neither party shall assign, transfer or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other party.

25. The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement and that the parties are authorized by law to engage in the cooperative action set forth herein.

26. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is confidential by law or a common law balancing of interests.

27. Each party shall keep confidential all information, in whatever form, produced, prepared, observed or received by that party to the extent that such information is confidential by law or otherwise required to be kept confidential by this Agreement.

28. This Agreement shall not become effective until and unless approved by appropriate official action of the governing body of each party.

**Attachment A - Scope of Work
WASHOE COUNTY SRTS PROJECT**

1. Virginia Palmer Elementary
2. Lemmon Valley Elementary
3. Elizabeth Lenz Elementary
4. Nancy Gomes Elementary
5. Brown Elementary

Virginia Palmer Elementary School

Scope of Work: Extend sidewalks on 9th Street. Complete crosswalk striping at 9th and Klondike. Extend 12" CMP and cover with backfill at the mid-block crossing on Klondike. Install access gate and stairway through the playground on Klondike.

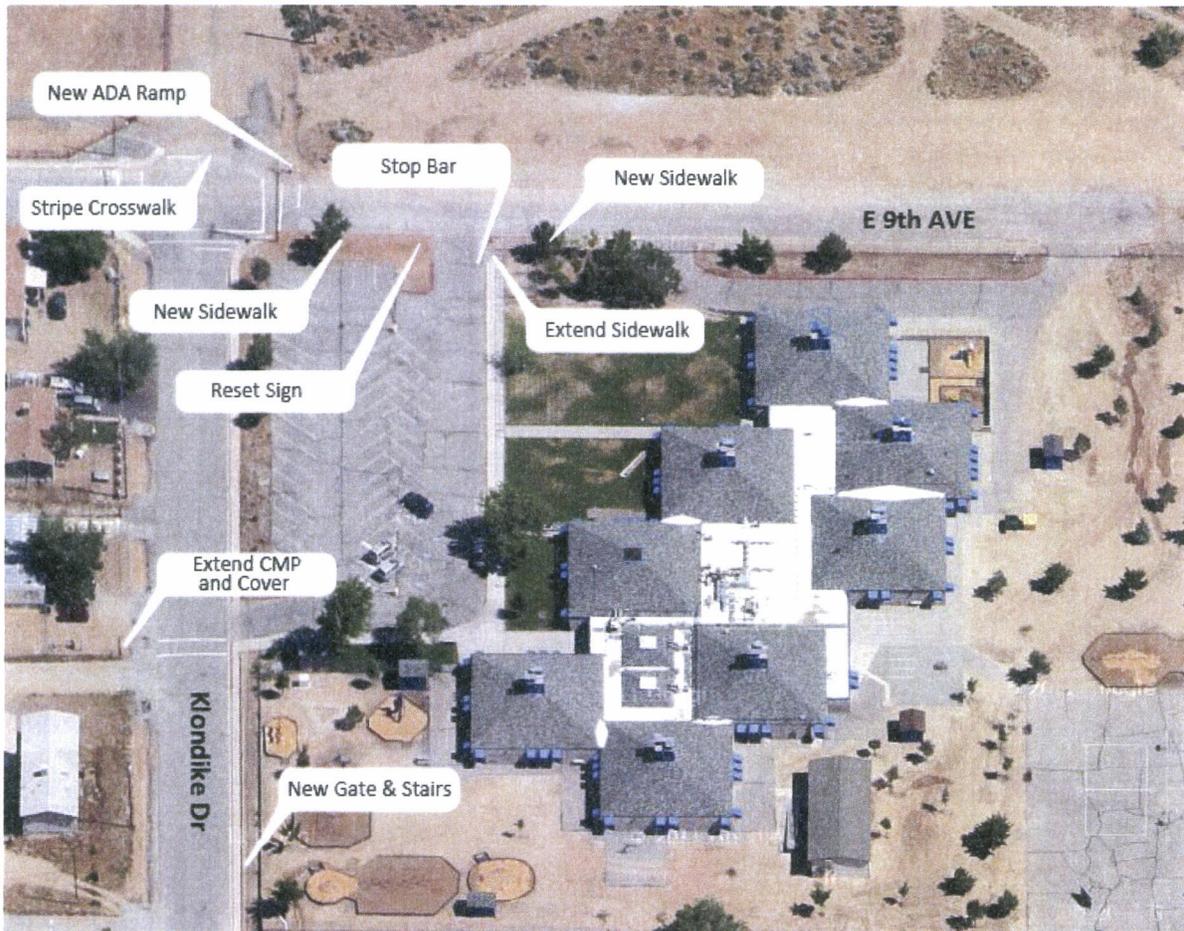


Figure 1

29. This Agreement constitutes the entire agreement of the parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Attorney General.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

Washoe County, acting by and through its
DEPARTMENT OF COMMUNITY SERVICES

State of Nevada, acting by and through its
DEPARTMENT OF TRANSPORTATION

Marsha Berkbigler, Chair
Washoe County Commission

Director

Approved as to Legality & Form:

Deputy Attorney General

Lemmon Valley Elementary School

Scope of Work: Construct a paved pedestrian path to the west of the school along the north side of Patrician Dr. from the south parking lot to Lemmon Valley Blvd. Install a Pedestrian Traffic Signal at the intersection of Patrician Dr. and Lemmon Valley Blvd.

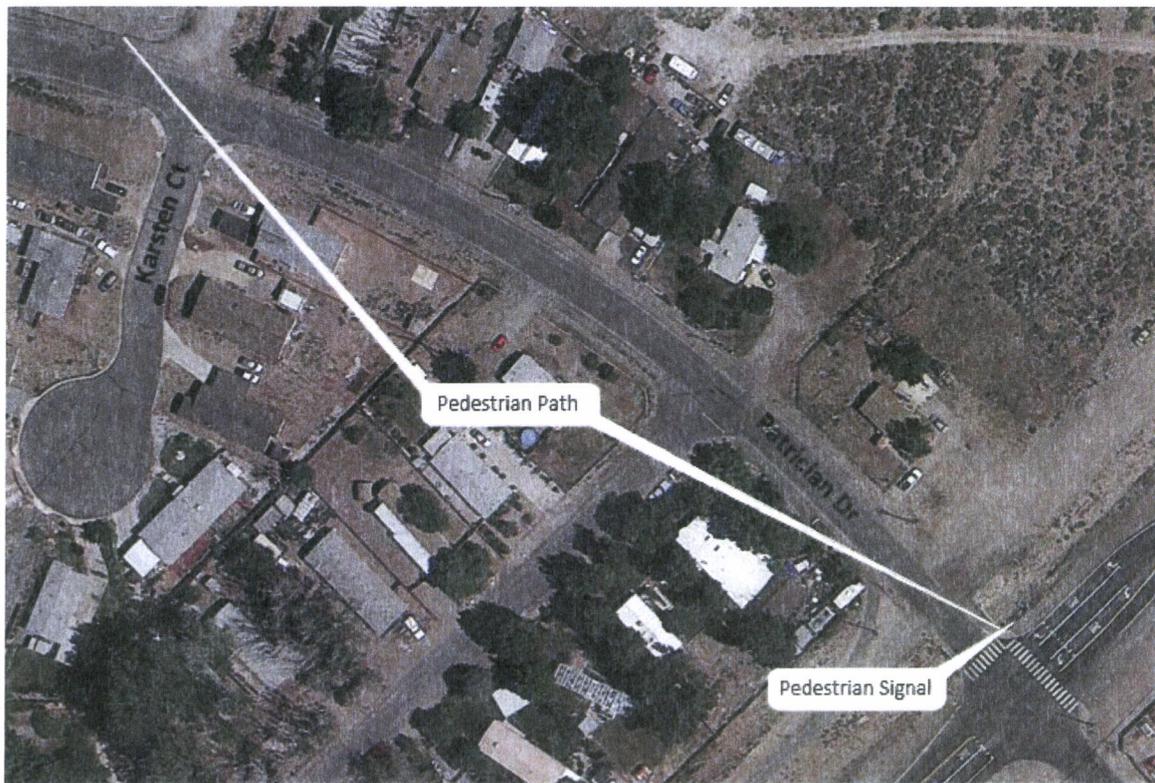


Figure 2

Elizabeth Lenz Elementary School

Scope of Work: Construct sidewalk with curb and gutter along Homeland Dr from Broili Dr to Edmands Dr. Extend the existing sidewalk in front of the school to the proposed new sidewalk on Homeland Dr. Construct new sidewalk with curb and gutter along Edmands Dr from Homeland Dr to Caribou Rd. Construct a new retaining wall to allow for the new sidewalk.



Figure 3

Nancy Gomes Elementary School

Scope of Work: Construct sidewalk with curb and gutter on Limkin St. from Fantail St. to Egret Lane. Construct a 'bulb out' radius return around south east corner including ADA ramp. Remove portable precast barrier rail.

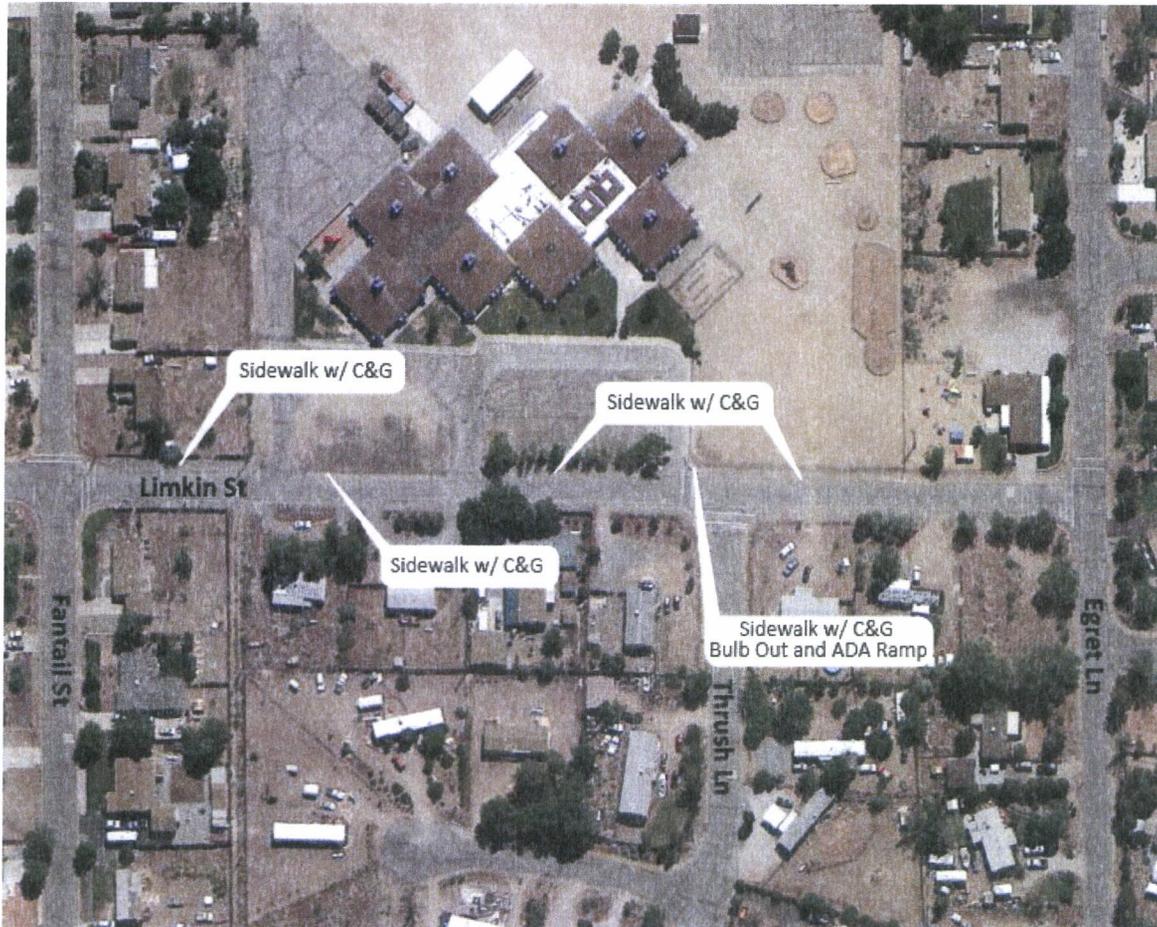


Figure 4

Brown Elementary School

Scope of Work: Construct a connecting five foot wide sidewalk along Western Skies Dr and eliminate the red no parking zone.



Figure 5